FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 92/2005
(Smt.Motabai wd/o Raghunath Bahekar & 3 others ***VERSUS*** Dhanvantabai Nonaji Mendhe **)**

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr.N.R.Borkar, Adv. for the appellants.
Mr.Gode, Adv. for the respondent.

CORAM : Smt. Vasanti A. Naik, J.
DATED : 26th July, 2007.

Heard Shri Borkar, the learned counsel for the appellants and Shri Gode, the learned counsel for the respondent.

The appellants are the original defendants. A suit was filed by the plaintiff for partition and separate possession of a share in the suit properties. It is not disputed that the property was originally owned by one Raghunath who had two wives viz. Motabai and Sitabai. Motabai had no issues and Sitabai had two daughters by name Dhanvantabai and Sarjabai. Dhanvantabai is the original plaintiff. She claims 1/3rd share in the suit property.

The defendants resisted the claim of the plaintiffs. It was the case of the defendants that the property was already partitioned by three partition deeds. According to the defendants, the suit

property was partitioned on 22.11.1993 and the plaintiff was given her share in the suit property in view of the said partition.

On the aforesaid pleadings of the parties, the trial Court framed the necessary issues and held that the suit filed by the plaintiff was liable to be dismissed as the defendants had proved that the suit property was also partitioned on 22.11.1993 and the plaintiff had been allotted her share.

In an appeal carried by the plaintiff to the first appellate Court, the findings recorded by the trial Court were reversed and the appeal filed by the plaintiff was allowed. According to the first appellate Court, the partition deed effected on 22.11.1993 was compulsorily registrable under the provisions of Section 17(1)(b) of the Registration Act, 1908. The Court held that the partition deeds on which the defendants sought the dismissal of the claim of the plaintiffs were not registered documents.

It was submitted on behalf of the appellants before this Court that the partition deed was not a partition deed as such but was a family arrangement. It was further submitted that in view of the family arrangement, the properties were allotted to each of the parties and a deed of family arrangement was not compulsorily registrable under Section 17 of the Act.

It was further submitted on behalf of the appellant that certain properties which were gifted to the plaintiff by the father of the plaintiff were also not included in the suit properties, and therefore, the suit for partition was not maintainable.

Shri Borkar, the learned counsel for the appellants, further submitted that there was a joint meeting of the parties to the suit and in the meeting it was decided to partition the properties amongst the parties. After the meeting, the document which is in the nature of family arrangement, came to be reduced into writing.

All the three submissions made on behalf of the appellants are not acceptable and are liable to be rejected. The first submission made on behalf of the appellant is totally misconceived as it was not the case of the defendants in the written statement that the property was distributed amongst the parties in view of the family arrangement. In fact, the word partition is used at various places in the written statement to deny the claim of the plaintiff.

I have perused a copy of the first partition deed dated 22.11.1993. It is absolutely clear that the document in question is not in the nature of the family arrangement and is a partition deed. Even otherwise, it was not the case of the appellants/ defendants that the document dated 22.11.1993 was a deed of family arrangement. In fact, it was

pleaded otherwise and it was stated that there was a family partition between the parties.

The second submission made on behalf of the appellant is further liable to be rejected for the reason that the defendant had not pleaded in their written statement that the suit filed by the plaintiff was bad for non inclusion of all the properties belonging to the family and the plaintiff had not disclosed about one of the properties which was in her possession. In the absence of the pleadings, an issue in that regard was not framed by the Courts and the plaintiff cannot be non suited at this stage as the plaintiff did not have an opportunity to meet the submission made on behalf of the defendants as the aforesaid fact was not pleaded by the defendant in the written statement.

The third submission is also liable to be discarded for the same reason on which the second submission is discarded.

There is absolutely nothing in the pleadings of the defendants to show that there was a meeting between the members of the family for taking the properties in view of any family arrangement. In fact, the thrust of the defendants is on the partition deed which was executed on 22.11.1993. There is no reference whatsoever to any meeting held prior to the execution of the partition deed. Even assuming that there was a meeting between the

parties, the document Exh.52A dated 22.11.1993 is a partition deed and does not disclose that it is a deed of family arrangement. The appellate Court was, therefore, justified in holding that the claim of the plaintiff could not have been rejected on the basis of the partition deed which was an unregistered document.

The findings recorded by the first appellate Court are pure findings of fact which do not give rise to any substantial question of law.

The second appeal is, therefore, dismissed with no order as to costs.

JUDGE

APTE